

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 1,582,474  
Registered February 13, 1990  
For the Mark: ASHLEY B.

ASHLEY NETTYE, INC.

Petitioner,

v.

KEY ITEM SALES, INC.

Respondent,

73/808, 219

Cancellation No. 92047786

**ANSWER TO PETITION FOR CANCELLATION**

KEY ITEM SALES, INC. ("Respondent"), through its counsel, hereby responds to the Petition for Cancellation of Petitioner ("Petition") ASHLEY NETTYE, INC. ("Petitioner"), as follows:

1. As to the introductory paragraph, Respondent denies that Petitioner is or will be damaged by Registration No. 1,582,474 for the trademark ASHLEY B.
2. As to Paragraph 1 of the Petition, Respondent lacks information sufficient to admit or deny the allegations therein, and on that basis denies each and every such allegation.
3. Respondent admits the allegation contained in Paragraph 2 of the Petition.



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4. As to Paragraph 3 of the Petition, Respondent lacks information sufficient to admit or deny the allegations therein, and on that basis denies each and every such allegation.

5. As to Paragraph 4 of the Petition, Respondent lacks information sufficient to admit or deny the allegations therein, and on that basis denies each and every such allegation.

6. As to Paragraph 5 of the Petition, Respondent lacks information sufficient to admit or deny the allegations therein, and on that basis denies each and every such allegation.

7. Respondent admits the allegations contained in Paragraph 6 of the Petition.

8. As to Paragraph 7 of the Petition, Respondent lacks information sufficient to admit or deny the allegations therein, and on that basis denies each and every such allegation.

9. Respondent denies the allegations contained in Paragraph 8 of the Petition.

10. As to Paragraph 9 of the Petition, Respondent admits that Registration No. 1,582,474 will provide Respondent with prima facie evidence of its exclusive right to use the subject mark and denies each and every other allegation contained therein.

11. As to Paragraph 10 of the Petition, Respondent denies each and every allegation contained therein.

12. As to Paragraph 11 of the Petition, Respondent denies each and every allegation contained therein.

13. As to Paragraph 12 of the Petition, Respondent denies each and every allegation contained therein.

### AFFIRMATIVE DEFENSES

Respondent asserts the following affirmative defenses, reserving the right to modify and expand these affirmative defenses up to and throughout the time of adjudication.

14. Paragraphs 1 through 13 are hereby incorporated in their entirety into these affirmative defenses by reference.

15. Petitioner has failed to state a claim upon which relief can be granted.

16. Petitioner has filed a petition to Cancel Respondent's Reg. No. 1,582,474, alleging that Respondent has abandoned its trademark. Respondent affirmatively alleges that it has not abandoned its mark because, *inter alia*, the mark that is the subject of Reg. No. 1,582,474 has been in continued use and has not been subject to a period of non-use with no intent to resume use of the mark, and Respondent has exercised control over use of its mark.

17. The Petition should be dismissed due to laches, estoppel, waiver and/or acquiescence.

18. The Petition should be dismissed because Petitioner has unclean hands.

19. The allegations of the Petition were not made in good faith, and those allegations made "on information and belief" did not have the requisite degree of investigation necessary and required to form a good faith allegation "on information and belief."

20. Petitioner failed to allege fraud in particularity, in accordance with FRCP 9(b).

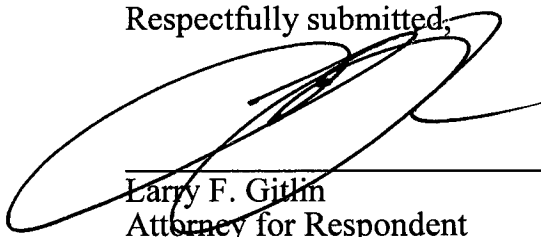
21. The registration sought to be cancelled is prima facie evidence of the validity of the registered mark, of Respondent's ownership of the registered mark and of Respondent's exclusive right to use the registered mark in commerce or in connection with the goods specified in the certificate of registration. The registration also constitutes constructive notice of Respondent's claim of ownership of the registered mark.

22. In view of the foregoing, Respondent contends that the Petition is groundless and baseless in fact and that Petitioner has not shown in any manner whatsoever wherein it will be, or is likely to be, damaged by continued registration of Respondent's trademark, i.e., Petitioner has failed to allege grounds to establish standing and to maintain the Petition.

RELIEF REQUESTED

WHEREFORE, Respondent prays that the Petition for Cancellation against U.S. Trademark Reg. No. 1,582,474 be dismissed in its entirety.

Respectfully submitted,

  
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Larry F. Gitlin  
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v.

Cancellation No. 92047786

KEY ITEM SALES, INC.

Respondent,

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *ANSWER TO PETITION FOR CANCELLATION* was served on August 17, 2007 the following by depositing a copy of the same with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to:

Jonathan E. Moskin  
White & Case LLP  
1155 Avenue of the Americas  
New York, NY 10036-2787

Date: August 17, 2007

  
\_\_\_\_\_  
Susan Lee Gleason

CERTIFICATE OF MAILING

I hereby certify that the attached *ANSWER TO PETITION FOR CANCELLATION* is being deposited with the United States Postal Service on August 17, 2007 as first class mail in an envelope addressed as follows:

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

Date: August 17, 2007

  
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Susan Lee Gleason